

# **EXHIBIT E**



ROPS & GRAY LLP

ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624 617-951-7000 F 617-951-7050  
BOSTON NEW YORK PALO ALTO SAN FRANCISCO WASHINGTON, DC [www.ropegray.com](http://www.ropegray.com)

September 26, 2006

John T. Montgomery  
(617) 951-7565  
[jmontgomery@ropesgray.com](mailto:jmontgomery@ropesgray.com)

**BY FEDERAL EXPRESS**

Gejaa T. Gobena  
Civil Division  
Patrick Henry Building  
601 D Street, N.W., Room 9028  
Washington, DC. 20004

George B. Henderson, II  
Assistant U.S. Attorney  
John J. Moakley U.S. Courthouse  
1 Courthouse Way, Suite 9200  
Boston, MA 02110

Re: *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL 1456 (D. Mass.)

Dear Mr. Gobena and Mr. Henderson:

On behalf of the Track 1 Defendants in the above-referenced litigation, I am enclosing our letter to the Center for Medicare and Medicaid Services ("CMS") under the relevant *Touhy* regulation, 45 C.F.R. § 2, *et seq.* We continue to maintain, however, that the United States is a party to this civil proceeding, and thus any request for testimony of a former CMS employee is exempt from the *Touhy* regulation. *Id.* at § 2.1(1). We are nonetheless proceeding under the regulation to attempt to avoid an unnecessary dispute.

As you know, this matter is scheduled for trial beginning on November 6, 2006, and Judge Saris has expressed interest in hearing testimony from government witnesses. Under the circumstances, we respectfully ask that you notify us as soon as practicable, and no later than one week from today, whether CMS will respond to our letter by October 15, 2006. If you cannot do so by next week, then we will begin preparation of a motion seeking an order compelling a response, and also alerting the court to the threshold dispute concerning the applicability of the *Touhy* regulation to this situation.

If you would like to discuss the foregoing, we would be pleased to speak with you at your earliest convenience.

Very truly yours,

A handwritten signature in black ink that reads "John T. Montgomery".

John T. Montgomery  
JTM/tw